

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

KIRX, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:05CV6SNL
)	
CENTRAL TOWER, INC. and)	
RAY RYAN,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on defendants' bill of costs (#33), filed October 5, 2006.

Plaintiff has filed objections to portions of the requested costs to which the defendants have filed a reply. This matter is now ripe for disposition.

In their bill of costs, defendants seek a total award of \$2780.46 representing the following:

Fees of Clerk	\$150.00
Fees of service of summons	\$271.00
Fees of Court Reporter	\$868.88
Fees for exemplification and copies	\$1311.62
Other costs	\$178.96

The plaintiff objects and agrees to an award of the following fees:

Fees of Clerk	\$0
Fees of service of summons	\$0
Fees of Court Reporter	\$558.00
Fees for exemplification and copies	\$0
Other costs	\$0

Evidently, upon further review, the defendants have amended their original request and now seek the following fees only:

Fees of Court Reporter	\$797.20
Fees for Witnesses	\$ 46.68

Photocopy Costs

\$1311.62

Defendants now seek a total award of \$2155.50. *See*, Defendants' Reply (#35), filed October 20, 2006.

Upon review of the revised bill of costs and the parties' pleadings, the Court will award fees for the court reporter in the amount of \$797.20 and fees for witnesses in the amount of \$46.68; however, the Court will not award any amount for photocopy costs. Expenses for photocopies "necessarily for use in the case" are recoverable by the prevailing party under §1920. Thus, photocopy costs for a prevailing party copying its own pleadings and motions for filing with the Court, serving on opposing counsel or transmitting to a client, copying documents to be produced in discovery, or copying research materials for the convenience of counsel are not taxable. Emmenegger v. Bull Moose Tube Co., 33 F.Supp.2d. 1127, 1134 (E.D.Mo. 1998). Rule 54(d) Fed.R.Civ.P. directs that costs, such as photocopying costs, "shall be allowed as of course to the prevailing party unless the court otherwise directs." "In determining whether a photocopy expense is necessary so as to be taxable as a cost and whether to award that cost to the prevailing party, the district court enjoys discretion so long as it does not act arbitrarily." Concord Boat Corp. v. Brunswick Corp., 309 F.3d. 494, 498 (8th Cir. 2002)(citations omitted).

The Court has analyzed that portion of defendants' Exhibit A listed in support of its request for photocopying expenses. The invoices setting forth these costs simply read "Photocopy Expense" without any explanation or description of the use for which the photocopies were made. The only minimal description is on Exhibit A, pg. 11 in which the notation "initial disclosure copies" is made for the date of July 18, 2005. Once again, it does not indicate whose initial disclosure: plaintiff or defendants? It is too difficult for the Court to determine to what extent these photocopying costs were necessarily incurred, and to what extent

they were incurred for the convenience of counsel. Under the circumstances, the Court must presume that these are routine copying expenses, and as such, should not be taxable.

Accordingly, for the reasons discussed above, and in light of the modifications to its request as made by defendants, the defendants' bill of costs against the plaintiff shall be adjusted and taxed as follows:

Fees for Court Reporter	\$797.20
Fees for Witnesses	<u>\$ 46.68</u>
Total	<u>\$843.88</u>

IT IS HEREBY ORDERED that plaintiff's objections to the defendants' bill of costs be and are **SUSTAINED IN PART** and **DENIED IN PART** as set forth above.

IT IS FINALLY ORDERED that defendants are awarded taxable costs in the total amount of \$843.88 and the Clerk of the Court is directed to tax such costs in said amount.

Dated 3rd day of January, 2007.



SENIOR UNITED STATES DISTRICT JUDGE